

No. 23-1890

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

TAMER MAHMOUD, ET AL.,

PLAINTIFFS-APPELLANTS,

v.

MONIFA B. MCKNIGHT, *IN HER OFFICIAL
CAPACITY AS SUPERINTENDENT OF THE MONTGOMERY
COUNTY BOARD OF EDUCATION, ET AL.,*
DEFENDANTS-APPELLEES.

On Appeal from the United States District Court
for the District of Maryland

Case No. 8:23-CV-01380-DLB

**BRIEF OF AMICUS CURIAE
ETHICS AND PUBLIC POLICY CENTER
IN SUPPORT OF PLAINTIFFS-APPELLANTS
AND URGING REVERSAL**

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STATEMENT OF INTEREST OF AMICUS CURIAE¹

The Ethics and Public Policy Center (“EPPC”) is a nonprofit research institution dedicated to applying the Judeo-Christian moral tradition to critical issues of public policy, law, culture, and politics. EPPC has a strong interest in promoting the Judeo-Christian vision of the human person, protecting religious liberty, and responding to the challenges of gender ideology.

Gender ideology has permeated culture with stunning speed, influencing medicine, business, media, entertainment, government, and education. Because gender ideology is sowing confusion and undermining personal well-being, its rise has created an urgent need for clarity, education, and compassionate guidance.

To meet this need, EPPC launched the Person & Identity Project, directed by Mary Rice Hasson, which “assists the Catholic Church in promoting the Catholic vision of the human person and responding to the

¹ All parties received timely notice to the filing of this brief and have given their consent. No party’s counsel authored any part of this brief and no person other than Amicus made a monetary contribution to fund its preparation or submission.

challenges of gender ideology.”² Many other EPPC Fellows have also written on gender ideology, including President Ryan Anderson.³

INTRODUCTION AND SUMMARY OF ARGUMENT

Central to the decision below is the district court’s inference that the Plaintiffs-Appellants (“Parents”) are overstating their case. The court’s opinion *understates* the significance and impact of the messages Defendants-Appellees’ (“School Board” or “Board”) curriculum teaches as moral and true, and thus *underestimates* how the Board’s refusal to

² EPPC, Person & Identity Project, <https://personandidentity.com/>.

³ Relevant publications from EPPC Fellows include:

- RYAN T. ANDERSON, WHEN HARRY BECAME SALLY (2018);
- ANDREW T. WALKER, GOD AND THE TRANSGENDER DEBATE (2017);
- CARL R. TRUEMAN, STRANGE NEW WORLD: HOW THINKERS AND ACTIVISTS REDEFINED IDENTITY AND SPARKED THE SEXUAL REVOLUTION (2022);
- Theresa Farnan, *Our World Has Lost the Catholic Understanding of Human Anthropology*, Our Sunday Visitor, June 2, 2023, <https://www.oursundayvisitor.com/our-world-has-lost-the-catholic-understanding-of-human-anthropology>;
- Rachel N. Morrison, *Gender Identity Policy Under the Biden Administration*, 23 FED. SOC. REV. 85 (2022), available at SSRN: <https://ssrn.com/abstract=4104566>;
- Amicus briefs on gender identity authored by EPPC fellows are available at EPPC, *Amicus Briefs: “Gender Transition” Interventions*, <https://eppc.org/amicus-briefs/#16-%E2%80%9Cgender-transition%E2%80%9D-interventions->.

permit an opt-out interferes with Parents' religious exercise and constitutional rights.

This brief offers the Court its perspective as an expert in gender ideology and the Judeo-Christian understanding of the human person to help show why the court below got it wrong.

Part I shows that the Board's curriculum does more than just "focus on tolerance, empathy, and respect for different views." It teaches radical claims about the human person and morality as true, and it tells children that anyone who opposes this new anthropology is factually and morally deficient. Part II demonstrates that the Board's curriculum fits squarely within "gender ideology," a radical worldview that has moved from the academy to the broader culture. Part III documents the Board's animus towards those who, like the Parents, sought an opt-out for religious reasons.

Finally, Part IV aims to complement the Parents' arguments by affirming that religious opposition to gender ideology is not a reflexive reaction to something new and different. Amicus offers a summary of Christian anthropology to show that religious opposition to gender ideology is not rooted in hate or xenophobia, as Board members claim,

but in fidelity to longstanding religious teaching on the truth of the human person. This summary demonstrates that gender ideology, including as promoted by the Board's curriculum, is fundamentally incompatible with Catholic theology and the Christian understanding of the human person.

ARGUMENT

I. The Board's curriculum does more than "encourage respect" for others; it teaches radical claims as true and good.

A common theme in the district court's opinion below is that *the School Board's sexuality and gender curriculum really isn't all that bad*. As the court sees it, the Board is merely "striv[ing] to 'provide a culturally responsive . . . curriculum that promotes equity, respect, and civility' and prepare[] students to '[c]onfront and eliminate stereotypes related to individuals' actual or perceived characteristics,' including gender identity and sexual orientation." *Mahmoud v. McKnight*, No. 23-CV-1380-DLB, 2023 WL 5487218, at *1 (D. Md. Aug. 24, 2023) (quoting ECF 43 ¶ 6). Its curriculum merely "creates and normalizes a fully inclusive environment for all students," helping them "empathize, connect, and collaborate with diverse peers and encourag[ing] respect for all." *Id.* (quoting ECF 43 ¶ 22). When summarizing "How Teachers Will Use the

Storybooks,” the court says, “Generally, the [Board’s] suggested responses [to student questions] focus on tolerance, empathy, and respect for different views.” *Id.* at 7.

But the storybooks themselves and the Board’s instructions to teachers tell a different story.

One of the books in the Board’s curriculum, *My Rainbow*,⁴ tells the story of Trinity, an elementary school-aged autistic boy who identifies as a transgender girl. The book states that “Trinity’s gender was part of what made her a masterpiece, just like her autism and her Black skin.” ECF 1-8 at 15. The family affirms Trinity’s transgender identity by using female pronouns, letting Trinity wear dresses, and making Trinity a rainbow-colored wig. *Id.* at 24-32.

Another book included in the curriculum, *Born Ready: The True Story of a Boy Named Penelope*,⁵ is about a five-year-old girl who declares, “inside I’m a boy.” ECF 1-5 at 8. Penelope is angry “[b]ecause everybody

⁴ Book reproduced at ECF 1-8, available at <https://becketnewsite.s3.amazonaws.com/20230524194648/2023-05-24-1-08-Cmplt-Ex-G.pdf>.

⁵ Book reproduced at ECF 1-11, available at <https://becketnewsite.s3.amazonaws.com/20230524194640/2023-05-24-1-10-Cmplt-Ex-I.pdf>.

thinks I'm a girl." Penelope asks her mom, "Help me be a boy." *Id.* at 11. Penelope's mom responds, "We will make a plan to tell everyone we love what we know. . . . You are a boy." *Id.* at 15.

Penelope's "Big Brother" objects to Mom's announcement: "This doesn't make sense. You can't become a boy. You have to be born one." *Id.* at 19. But Mom corrects Big Brother: "Not everything *needs* to make sense. *This is about love.*" *Id.*

The Board's "Sample Student Call-Ins" document instructs teachers how to respond to a student, like Penelope's "Big Brother," who says, "You can't become a boy. You have to be born one." Teachers should say this is a "hurtful" observation that "shouldn't" be made in class.⁶ "Our bodies do not decide our gender."⁷ "We cannot know someone's gender by looking at them."⁸

Teaching that a biological male can "be" a female and that subjective beliefs or wishes override biological reality is not merely advancing

⁶ Montgomery Cty. School Bd., *Sample Student Call-Ins* at 2, ECF 55-3, available at <https://becketnewsite.s3.amazonaws.com/20230817172657/2023-08-16-55-3-Ex.-3.pdf>.

⁷ *Id.* at 3.

⁸ *Id.*

“diversity” and “inclusion”; it is teaching that “gender ideology” is true and that refusing to acquiesce is hurtful and wrong.

II. The challenged curriculum aligns with “gender ideology.”

The Board’s curriculum reflects “gender ideology,” a set of radical ideas about sexuality, gender, and the human person. Gender ideology teaches that a person’s identity is self-determined based on feelings or self-perception, regardless of the person’s sex (male or female).

Gender ideology developed over the latter half of the twentieth century. In 1949, French existentialist philosopher Simone de Beauvoir wrote, “One is not born, but rather becomes, woman,” foreshadowing second-wave feminism and the coming gender revolution.⁹ Psychologist John Money, who worked with transsexuals in the 1950s and 60s, popularized the use of the term “gender” to denote behavioral (as opposed to biological) differences between males and females.¹⁰ Money theorized that it was possible for an individual to have a social identity, a “gender” identity that diverged from the biological reality of the person’s sexed

⁹ SIMONE DE BEAUVOIR, THE SECOND SEX 283 (Constance Border and Sheila Malovany-Chevallier, trans., 2011).

¹⁰ TERRY GOLDIE, THE MAN WHO INVENTED GENDER: ENGAGING THE IDEAS OF JOHN MONEY (2014).

body. Furthermore, Money “believed that if you were a biological male and believed yourself to be a female that it was an idée fixe—it was so important to you as a person that it could not be contradicted.”¹¹ *Under this worldview, it is less violent and more “affirming” to help the patient change his or her body than to help the patient change his or her mind.*

The Board’s curriculum reflects gender ideology’s advance from academia to school classrooms.¹² The Board’s “LGBTQ+ Information” webpage¹³ links to a “Gender Inclusive Schools Toolkit” produced by Gender Spectrum, an organization that promotes “gender-inclusive puberty education.”

¹¹ Rachel Giese and Chris Wodskou, *The Story of John Money: Controversial Sexologist Grappled with the Concept of Gender*, CBC NEWS, July 5, 2015, <https://www.cbc.ca/news/canada/the-story-of-john-money-controversial-sexologist-grappled-with-the-concept-of-gender-1.3137670>.

¹² G.K. Marinov, *In Humans, Sex Is Binary and Immutable*, 33 ACADEMIC QUESTIONS 279 (2020), <https://www.nas.org/academic-questions/33/2/in-humans-sex-is-binary-and-immutable>.

¹³ Montgomery County Public School, LGBTQ+ Information (For Students and Staff), <https://www2.montgomeryschoolsmd.org/LGBTQ/>.

Gender Spectrum teaches sex ed while trying to avoid the terms “males” and “females;” instead, it suggests that teachers refer to “bodies with a penis and testicles or bodies with a vulva and ovaries.”¹⁴

No longer content with merely persuading others, some gender ideologues now claim that a biologically-based definition of sex is *not only incorrect but oppressive*. The online “Trans Language Primer” defines “sex” as:

A binary system (wo/man) set by the medical establishment to reinforce white supremacy and gender oppression, usually based on genitals and sometimes chromosomes.¹⁵

The Board matches the radical “Trans Language Primer” step-for-step: its “Sample Student Call-Ins” states that students “shouldn’t” be “hurtful” by saying that sex is biologically determined;¹⁶ one Board Member likened parents who oppose its gender ideology curriculum to “white supremacists” and “xenophobes.” *Mahmoud*, 2023 WL 5487218 at

*12.

¹⁴ Gender Spectrum, *Principles of Gender-Inclusive Puberty and Health Education* 12 (2019), available at <https://bit.ly/45NP9i2>.

¹⁵ The Trans Language Primer, <https://web.archive.org/web/20210304155343/https://www.translanguageprimer.org/primer/#sex>.

¹⁶ Montgomery Cty. School Bd., *supra* n. 6, at 2.

Gender ideology is a radical construct built on radical philosophical and metaphysical presuppositions. David Crawford and Michael Hanby, professors at the Pontifical John Paul II Institute for Studies on Marriage & Family at the Catholic University of America, unfolded these presuppositions in an essay for the Wall Street Journal:

The unstated premise [of gender ideology] is that the relationship between our embodiment as male and female and our personal subjectivity (as expressed in “identity”) is essentially arbitrary. . . . These assumptions further imply that . . . to be a woman is a mental state, that we really are Cartesian “ghosts in the machine.” . . .

These are metaphysical judgments . . . highly questionable philosophical propositions with [profound] implications for society [because] [i]t is impossible to redefine human nature for only one person. When a fourth-grade girl is required to affirm in thought, word and deed that a boy in her class is now a girl, **this does not simply affirm the classmate’s right to self-expression. It calls into question the meaning of “boy” and “girl” as such.** . . . If each of us is defined by a “gender identity” only arbitrarily related to our male and female bodies . . . **then there is no longer any such thing as man or woman.** . . .

What we are dealing with is **nothing less than a war on reality itself.** . . . **There is no totalitarianism so total as that which claims authority over the meaning of nature.**¹⁷

¹⁷ David Crawford and Michael Hanby, *The Abolition of Man and Woman*, WSJ, June 24, 2020 (emphases added),

EPPC's Mary Rice Hasson has likewise stated that gender ideology "has become a government-promoted anthropology, an alternative belief system that proposes its own (false) 'truth' about the human person."¹⁸ As Hasson notes, public schools have been a chief means through which government has advanced this "alternative belief system":

Public schools in most states have been deeply engaged in promoting gender ideology for over a decade already through anti-bullying initiatives, diversity and inclusion programs, LGBTQ-inclusive sex education and, in a few states, LGBTQ curriculum mandates. The teachers' unions, state schools of education, and the education establishment have all embraced the LGBTQ agenda for years. Except for a few brave holdouts here and there, local school boards have toppled like dominoes, caving under intense pressure (and threats of lawsuits from the ACLU, Lambda Legal, and other activist litigators) to enact transgender-inclusive policies and "gender identity" protections.¹⁹

<https://www.wsj.com/articles/the-abolition-of-man-and-woman-11593017500>.

¹⁸ Mary Rice Hasson, *Erasing Females in Language and Law*, 11 J. OF CHRISTIAN LEGAL THOUGHT 44, 46 (Oct. 2021), available at <https://eppc.org/publication/erasing-females-in-language-and-law/>.

¹⁹ *Id.* at 48.

III. The Board's decision to deny parents an opportunity to opt out of its gender ideology curriculum is laced with animus against the Parents' religious convictions.

On five separate occasions, the district court credits the Board's claim that its curriculum is not ideologically biased; it merely makes sure that every student sees himself or herself in the curriculum, regardless of sexual orientation, gender identity, or religion:

[W]e have pledged to . . . make sure every student sees themselves [sic] in the curriculum. *Mahmoud*, 2023 WL 5487218 at *9.

Every student, regardless of their [sic] sexual orientation or their [sic] gender identity, has the right to be reflected in what they learn. *Id.* at 10.

[W]e are going to ensure that every student in our school at every age can seek [sic] themselves [sic] in the work of their [sic] classroom. . . . *Id.*

[E]very student has the right to be reflected in what they [sic] learn. *Id.* at 11.

[I want to make sure we continue] to send a clear message to all our students that regardless of their gender identity or religion, this is their MCPS and they have a right to see themselves in what they learn everyday. *Id.* (brackets in original).

But the Board's conduct cannot be squared with these benign statements of purpose. Its gender ideology curriculum is not neutral. It teaches one anthropology as true, good, and loving. It describes those who

oppose this anthropology as ignorant, hateful, and bigoted. In justifying their refusal to honor parents' right to opt out from their gender ideology curriculum, they have maligned these parents' integrity and good will:

- Defendant Harris claimed that parents requesting an opt-out on the basis of their religious convictions were really "just telling [their child], 'here's another reason to hate another person.'" *Mahmoud*, 2023 WL 5487218 at *10.
- Defendant Harris also said that parents with religious objections to gender ideology deserve to be treated like "white supremacists" and "xenophobes." *Id.*
- Defendant Harris later accused a student supporting opt-outs of "parroting" his parents' "dogma." *Id.* at 12.
- At the January 12, 2023 board meeting, one parent expressed a concern that the Board's approach "implied that parents' religious and family traditions are wrong." *Id.* at *9. Two weeks later, a District elementary school principal confirmed this concern when she claimed that requests for an accommodation were motivated not by sincere religious convictions but by "fears." *Id.* at *10.
- The District principal also claimed that a parent asking that his or her child not be exposed to the District's gender ideology curriculum was the same thing as opposing books with Jewish, Muslim, and African-American characters. *Id.*
- Another Board member said that parents' concerns about the District's gender ideology curriculum indicate that, "yes, ignorance and hate does exist within our community." *Id.* .

Through these comments, the Board tacitly concedes that—at least on this point—it and the Parents see eye-to-eye: its curriculum is fundamentally incompatible with their religious convictions about

human nature and human flourishing. The Board believes that its curriculum is correct and good; students and parents who oppose it are hateful xenophobes.

Board members are entitled to their personal convictions about religious parents in Montgomery County and what major world religions teach about the human person. But “[t]he Constitution ‘commits government itself to religious tolerance, and upon even slight suspicion that proposals for state intervention stem from animosity to religion or distrust of its practices, all officials must pause to remember their own high duty to the Constitution and to the rights it secures.’” *Masterpiece Cakeshop, Ltd. v. Colorado C.R. Comm'n*, 138 S. Ct. 1719, 1731 (2018) (quoting *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 547 (1993)). “The Free Exercise Clause bars even ‘subtle departures from neutrality’ on matters of religion.” *Masterpiece*, 138 S. Ct. at 1731 (quoting *Lukumi*, 508 U.S. at 534). The Board’s conduct and its comments fall well short of this constitutional bar.

IV. Gender ideology is radically at odds with Catholic teaching on the human person.

The Parents’ complaint and briefing ably express their sincere religious objections to the Board’s curriculum. This final section of this

amicus brief aims to complement the Parents' arguments by affirming that religious opposition to gender ideology is not a reflexive reaction to something new and different. Rather, this religious opposition is based on religious convictions about the nature of the human person that have been held within each Plaintiff-Appellant's religious tradition for millennia. As one Christian leader explained:

[O]ne need not agree with Christians or Muslims or Orthodox Jews or others on marriage and sexuality to see that such views are not incidental to their belief systems. They did not emerge out of a political debate, and they won't be undone by political power. . . . One cannot simply uproot them and expect these people to adjust their consciences to fit the new cultural expectation.²⁰

Each of the religious traditions represented by the Plaintiffs-Appellants has a compelling story to tell. This brief, however, focuses on the Catholic Church's beliefs about the human person. Amicus draws upon the expertise of its Person & Identity Project, whose mission is "to assist the Catholic Church in promoting the Catholic vision of the human person and responding to the challenges of gender ideology."²¹

²⁰ Russell Moore, *Just How Secular Should America Be?*, N.Y. TIMES, June 18, 2020, <https://www.nytimes.com/2020/06/18/opinion/supreme-court-religious-freedom.html>.

²¹ Person and Identity Project, *About Us*, <https://personandidentity.com/about/>.

Affirming the importance and goodness of the human body has always been central to the Catholic faith. In the second century A.D., bishops condemned “Gnosticism,” a philosophy that taught people to seek happiness and salvation through transcending their material bodies.²² In response, the early Christian Church affirmed that Jesus Christ was both truly God and truly man, and that implicit in the Incarnation is the good news that our bodies are *good* and an *essential* part of what it means to be a human person.²³ As St. Athanasius of Alexandria taught in his treatise, *On the Incarnation*,

For we were the purpose of his embodiment, and for our salvation he so loved human beings as to come to be and appear in a human body.²⁴

This teaching on the dignity of the human person, and by extension the goodness of the human body, remains foundational to Catholic

²² See JARISLAV PELIKAN, THE CHRISTIAN TRADITION, VOL. 1: THE EMERGENCE OF THE CATHOLIC TRADITION (100-600) 81-97 (1975).

²³ See John B. Buescher, *Gnosticism vs. The Incarnation: The Ancient Battle Renewed*, Cath. World Report, June 8, 2015, <https://www.catholicworldreport.com/2015/06/08/gnosticism-vs-the-incarnation-the-ancient-battle-renewed/>.

²⁴ Athanasius of Alexandria, *On the Incarnation* § 4, available at <https://ccel.org/ccel/athanasius/incarnation/incarnation.ii.html>.

teaching.²⁵ The Catholic faith embraces each person's sexual identity, male or female, as a gift from God: "Male and female he created them."²⁶ "Equal in dignity" but complementary, the Catholic Church teaches that man and woman exist in a "reciprocal relationship," a gift to one another, "entrusted [with] not only the work of procreation and family life, but the creation of history itself."²⁷

Throughout its history, the Catholic Church has developed its doctrine to address the challenges that each age brings. Today, the Church sees the . . . world "is undergoing a profound anthropological crisis, a crisis of meaning."²⁸ As such, Pope Francis, the United States Catholic Conference of Bishops (USCCB), and dozens of American bishops have expounded on the Christian view of the human person and why it is incompatible with gender ideology—the belief system endorsed and promoted by the Board.

²⁵ See PONTIFICAL COUNCIL OF JUSTICE AND PEACE, COMPENDIUM OF THE SOCIAL DOCTRINE OF THE CHURCH ¶ 144 (2006) ("COMPENDIUM").

²⁶ *Genesis* 5:2.

²⁷ COMPENDIUM ¶¶ 146, 147.

²⁸ Junno Arocho Esteves, *World in 'Profound Anthropological Crisis,' Pope Says*, Catholic News Service, May 19, 2022, <https://cruxnow.com/vatican/2022/05/world-in-profound-anthropological-crisis-pope-says>.

Pope Francis calls gender ideology “one of the most dangerous ideological colonizations” today.²⁹ He sees this “anthropology of gender” as “extremely dangerous because it eliminates differences, and that erases humanity, the richness of humanity, both personal, cultural, and social.”³⁰ Attempts to erase biological differences are part of “a Gnostic heresy.”³¹ Pope Francis’ encyclical letter *Laudato Si* compares gender ideology with human failures to respect the environment, the natural order:

Human ecology also implies another profound reality: the relationship between human life and the moral law, which is inscribed in our nature and is necessary for the creation of a more dignified environment. Pope Benedict XVI spoke of an “ecology of man”, based on the fact that **“man too has a nature that he must respect and that he cannot manipulate at will.”** It is enough to recognize that our body itself establishes us in a direct relationship with the environment and with other living beings. **The acceptance of our bodies as God’s gift is vital for welcoming and**

²⁹ Courtney Mares, *Pope Francis: Gender Ideology Is ‘One of the Most Dangerous Ideological Colonizations’ Today*, Catholic News Agency, March 11, 2023,

<https://www.catholicnewsagency.com/news/253845/pope-francis-gender-ideology-is-one-of-the-most-dangerous-ideological-colonizations-today>.

³⁰ *Id.*

³¹ *Pope Francis: I prayed for Peace in Fatima Without Publicity,’* Vatican News, Aug. 2023,

<https://www.vaticannews.va/en/pope/news/2023-08/pope-francis-portugal-wyd-inflight-press-conference.html>.

accepting the entire world as a gift from the Father and our common home, whereas thinking that we enjoy absolute power over our own bodies turns, often subtly, into thinking that we enjoy absolute power over creation. Learning to accept our body, to care for it and to respect its fullest meaning, is an essential element of any genuine human ecology. Also, valuing one's own body in its femininity or masculinity is necessary if I am going to be able to recognize myself in an encounter with someone who is different. In this way we can joyfully accept the specific gifts of another man or woman, the work of God the Creator, and find mutual enrichment. It is not a healthy attitude which would seek "to cancel out sexual difference because it no longer knows how to confront it".³²

The United States Conference of Catholic Bishops has likewise warned Catholics that gender ideology conflicts with God's design for creation. In 2017, USCCB committee chairmen led an interreligious coalition of Christian and Muslim leaders that published "Created Male and Female: An Open Letter from Religious Leaders." That statement reads, in part:

We acknowledge and affirm that all human beings are created by God and thereby have an inherent dignity. We also believe that God created each person male or female; therefore, sexual difference is not an accident or a flaw—it is a gift from God that helps draw us closer to each other and to God. What God has created is good. "God created mankind in his image;

³² Pope Francis, *Laudato Si* ¶155 (May 24, 2015) (emphases added) (citations omitted),

https://www.vatican.va/content/francesco/en/encyclicals/documents/papa-francesco_20150524_enciclica-laudato-si.html.

in the image of God he created them; male and female he created them” (Gen 1:27).

A person’s discomfort with his or her sex, or the desire to be identified as the other sex, is a complicated reality that needs to be addressed with sensitivity and truth. Each person deserves to be heard and treated with respect; it is our responsibility to respond to their concerns with compassion, mercy and honesty. As religious leaders, we express our commitment to urge the members of our communities to also respond to those wrestling with this challenge with patience and love.

Children especially are harmed when they are told that they can “change” their sex or, further, given hormones that will affect their development and possibly render them infertile as adults. Parents deserve better guidance on these important decisions, and we urge our medical institutions to honor the basic medical principle of “first, do no harm.” Gender ideology harms individuals and societies by sowing confusion and self-doubt. The state itself has a compelling interest, therefore, in maintaining policies that uphold the scientific fact of human biology and supporting the social institutions and norms that surround it.

The movement today to enforce the false idea—that a man can be or become a woman or vice versa—is deeply troubling. It compels people to either go against reason—that is, to agree with something that is not true—or face ridicule, marginalization, and other forms of retaliation.

We desire the health and happiness of all men, women, and children. Therefore, we call for policies that uphold the truth of a person's sexual identity as male or female, and the privacy and safety of all. We hope for renewed appreciation of the beauty of sexual difference in our culture and for

authentic support of those who experience conflict with their God-given sexual identity.³³

In 2019, the USCCB released a collection of “Select Teaching Resources” from popes and other authorities to help educators and pastors deal with gender ideology.³⁴

Finally, in March 2023, the USCCB’s Committee on Doctrine published a document “On the Moral Limits to Technological Manipulation of the Human Body,” expressing Catholic moral teaching on so-called “gender affirmation” surgeries.³⁵

Individual Catholic Bishops have developed their own pastoral documents and policies related to gender ideology. The Person & Identity Project’s website hosts statements from over thirty-one dioceses in the

³³ *Created Male and Female: An Open Letter from Religious Leaders*, Dec. 15, 2017, <https://www.usccb.org/topics/promotion-defense-marriage/created-male-and-female>.

³⁴ USCCB, “Gender theory”/“Gender ideology” – Select Teaching Resources, https://www.usccb.org/resources/Gender-Ideology-Select-Teaching-Resources_0.pdf

³⁵ USCCB, Committee on Doctrine, *Doctrinal Note on the Moral Limits to Technological Manipulation of the Human Body*, March 20, 2023, <https://www.usccb.org/resources/Doctrinal%20Note%202023-03-20.pdf>.

United States alongside related statements from the Vatican, the USCCB, and bishops around the world.³⁶

In some of these documents, bishops explain that the duty to resist gender ideology is itself a duty to love those struggling with their gender identity. For example, the pastoral letter from the Bishop of Arlington, Virginia states as follows:

Those asserting a transgender identity and/or seeking to “transition” often adopt new names and pronouns that reflect their desired identity and insist that others must use the chosen names and pronouns. **Such use might seem innocuous and even appear to be an innocent way of signaling love and acceptance of a person. In reality, however, it presents a profound crisis: We can never say something contrary to what we know to be true.** To use names and pronouns that contradict the person’s God-given identity is to speak falsely.

The faithful should avoid using “gender-affirming” terms or pronouns that convey approval of or reinforce the person’s rejection of the truth. It is not harsh or judgmental to decline to use such language. In the broader culture, Catholics may experience significant pressure to adopt culturally-approved terminology. However, **in no circumstances should anyone be compelled to use language contrary to the truth.** The right to speak the truth inheres in the human person and cannot be taken away by any human institution. Attempts by the state, corporations, or employers to compel such language, particularly by threats of legal action or job

³⁶ EPPC, Person & Identity Project, *Catholic Teaching, Church Documents, and Diocesan Policies*, <https://personandidentity.com/resources/church-documents/>.

loss, are unjust. **We must love in the truth, and truth must be accurately conveyed by our words. At the same time, clarity must always be at the service of charity, as part of a broader desire to move people towards the fulness of the truth.**³⁷

* * *

The Board's curriculum teaches impressionable elementary school children—those young enough to be read from a picture book—that they should call a boy a girl, or a girl a boy, if that is what the child desires. This moral command must be followed even if it “doesn’t make sense,” because “[n]ot everything *needs* to make sense. *This is about love.*” ECF 1-19.

As shown above, Catholic teaching on these matters is diametrically opposed to the beliefs that the Board aims to ingrain in the Plaintiffs-Appellants' children. The Catholic Church teaches that “to love is to will the good of the other,”³⁸ and that one does not will the good of the other by affirming or cooperating in something one knows to be harmful and

³⁷ Catholic Diocese of Arlington, *A Catechesis on the Human Person & Gender Ideology* (Aug. 12, 2021) (emphases added), <https://personandidentity.com/wp-content/uploads/2021/08/Catholic-Diocese-of-Arlington-A-Catechesis-on-the-Human-Person-and-Gender-Ideology.pdf>.

³⁸ Catechism of the Catholic Church ¶ 1766.

false. Contrary to Board members' claims and to what its curriculum teaches, these religious convictions are neither hateful nor xenophobic. They reflect deeply held religious convictions about the truth of the human person.

CONCLUSION

The Board is not just promoting inclusion and diversity. It is endeavoring to teach as true an ideological belief system about what it means to be human—beliefs that the Catholic Church has from the beginning taught are wrong and dangerous. The Board has claimed, and the court below agreed, that a government school may deny Parents an opportunity to opt their children out of this gender ideology curriculum. This regime puts Catholic parents in Montgomery County to a Hobson's choice: They must either let the local public system instruct their children that what their parents and church teach about men and women are false, and that their parents and pastor deserve to be treated like white supremacists and xenophobes, or else withdraw their children and find an alternative schooling option that will not demonize their convictions. That is not right. The First Amendment demands more.

The Court should find for the Plaintiffs-Appellants and reverse the decision below.

Respectfully submitted,

s/ Eric N. Kniffin

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in Microsoft Word Version 2309 using a proportionally spaced typeface, 14-point Century Schoolbook.

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CERTIFICATE OF SERVICE

I, Eric Kniffin, an attorney, certify that the foregoing Brief was served electronically on all parties via CM/ECF.

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